



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jim Gibbons, Campaign Manager
Dan Bongino for U.S. Senate
P.O. Box 827
Severna Park, MD 21146

DEC 16 2014

RE: MUR 6690
Sobhani for Maryland and Guilda
Mahmoudi in her official capacity
as treasurer

Dear Mr. Gibbons:

This is in reference to the complaint you filed with the Federal Election Commission on November 9, 2012, concerning an alleged violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Sobhani for Maryland ("Committee"). After considering the circumstances of this matter, the Commission determined to dismiss this matter and closed the file on December 9, 2014. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

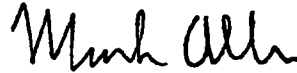
The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

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Jim Gibbons, Campaign Manager
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Associate General Counsel for Enforcement



BY: Mark Allen
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

11/02/2014 10:00 AM

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Sobhani for Maryland and Guilda Mahmoudi
6 in her official capacity as treasurer¹

MUR 6690

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8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission
10 alleging that Sobhani for Maryland and its treasurer ("Committee" or "Respondents") made robo
11 calls that lacked a required disclaimer. For the reasons discussed below, the Commission
12 concludes that further enforcement action would not be an efficient use of the Commission's
13 resources and exercises its prosecutorial discretion to dismiss the allegation that the Committee
14 violated 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) by failing to include a proper disclaimer in
15 a phone bank.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Facts**

18
19 Rob Sobhani was an Independent candidate for U.S. Senate in Maryland in the 2012
20 general election held on November 6, 2012, and the Committee was his authorized campaign
21 committee. The complaint alleges that on November 4, 2012, the Committee placed robo calls to
22 Maryland residents without a disclaimer, in violation of the Commission's regulations. Compl. at
23 1 (Nov. 9, 2012).² The complaint states that the robo call contained the following message:

¹ On July 15, 2013, Sobhani for Maryland amended its Statement of Organization to name Mahmoudi as treasurer.

² The complaint was dated November 5, 2012. Complainant also sent an email dated November 8, 2012. See Email from Jim Gibbons, Campaign Manager, Dan Bongino for U.S. Senate to Frankie Hampton, CELA, FEC (Nov. 8, 2012 05:03 PM EST) ("Nov. 8 Email"). OGC received the complaint on November 9, 2012. The Complainant filed a Supplemental Complaint on February 25, 2013. See Email from Jim Gibbons, Campaign Manager, Dan Bongino for U.S. Senate to Jeff Jordan, Supervisory Attorney, FEC (Feb. 25, 2013 02:17 PM EST) ("Supplemental Complaint").

1 Hi, this is Mary. I'm a lifelong conservative Republican here in Maryland. I
2 just learned something shocking. The Republican nominee for U.S. Senate
3 doesn't support making English the official language. But Independent
4 candidate Rob Sobhani supports making English the official language. You
5 know, we conservatives can finally beat Ben Cardin if we vote for the real
6 conservative in this race, Rob Sobhani. So don't waste your vote. Let's elect a
7 real conservative in this race. Rob Sobhani for U.S. Senate. Thanks for
8 listening.
9

10 *Id.*
11

12 In response to the initial complaint, the Respondents requested that the matter be dismissed
13 because the robo call in question included a disclaimer. The Response provided a copy of the robo
14 call which included the following statement: "This message is approved and paid for by Sobhani
15 for Maryland." Email from Rob Sobhani to Frankie Hampton, CELA FEC (Dec. 5, 2012 10:54
16 AM EST) to Jeff Jordan dated Dec. 5, 2012 ("Sobhani Response"). In response to the
17 Supplemental Complaint, Respondents assert that "[i]f indeed a disclaimer was not included by
18 the vendor, it was corrected" and if a robo call without a disclaimer was heard, then "it was an
19 isolated event based on a possible mistake by the vendor." Email from Rob Sobhani to Jeff
20 Jordan, CELA, FEC (Apr. 9, 2013 12:55 PM EST). The Respondents also state that the
21 Committee was informed by the vendor that "what happened was that we tried to get you to play
22 the correct message but your campaign manager insisted it wasn't necessary. Someone from your
23 staff later called to correct the mistake and so the calls were stopped and the correct message with
24 disclaimer was played to the remainder of the list." Email from Rob Sobhani to Frankie Hampton,
25 CELA, FEC (May 17, 2013 04:25 PM EST)("May 17 Email Response").³
26

³ Respondents did not indicate the dates that the vendor communicated with the campaign manager or other campaign staff regarding the robo calls at issue and what date the vendor's message was received.

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the “Act”), requires that when a political committee “makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing or any other type of general public political advertising,” it must place a disclaimer in the communication identifying the authorized political committee that paid for the communication. 52 U.S.C. § 30120(a) (formerly 2 U.S.C. § 441d(a)).

The Commission’s regulations further provide that disclaimers are required in “[a]ll public communications, as defined in 11 C.F.R. § 100.26, made by a political committee.” 11 C.F.R. § 110.11(a)(1). A “public communication” includes “communication by means of any . . . telephone bank to the general public, or any other form of general public political advertising.” *See* 52 U.S.C. § 30101(22) (formerly 2 U.S.C. § 431(22)); 11 C.F.R. § 100.26. “‘Telephone bank’ means more than 500 telephone calls of an identical or substantially similar nature were made within any 30-day period.” 52 U.S.C. § 30101(24) (formerly 2 U.S.C. § 431(24)); 11 C.F.R. § 100.28. Telephone calls are “substantially similar” when they “include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient’s name, occupation, or geographic location.” 11 C.F.R. § 100.28.

Although the number of robo calls in this matter is unknown, it is likely that more than 500 were made within a 30 day period. Therefore, it appears that the robo calls may have been “public communications” made by the Committee and thus required a disclaimer. *See* 52 U.S.C. § 30101(22) (formerly 2 U.S.C. § 431(22)); 11 C.F.R. § 100.26. While the Committee acknowledged it is responsible for the robo calls and has provided information indicating that a portion of those calls did not include a disclaimer, the available information indicates that the

1 Committee took remedial action by contacting the vendor and requiring that a disclaimer be placed
2 on all future calls. *See* May 17 Email Response. Accordingly, in light of the Committee's
3 remedial action and the Commission's resources and priorities, the Commission concludes that
4 further enforcement action would not be an efficient use of the Commission's resources and
5 exercises its prosecutorial discretion to dismiss the allegation that Sobhani for Maryland and
6 Guilda Mahmoudi in her official capacity as treasurer violated 52 U.S.C. § 30120 (formerly
7 2 U.S.C. § 441d) by failing to include a disclaimer in robo calls authorized and paid for by the
8 Committee. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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